NOTES.

CONSTITUTIONAL LAW—NATURALIZATION OF PORTO RICANS—SUFFRAGE.—*The People of the State of New York ex rel. Frank Juarbe* v. *The Board of Inspectors, etc. 32 Miscellaneous, 584.*

This was an application for a mandamus to compel the Board of Inspectors of an election district to register the relator, a native of Porto Rico, as a qualified voter. The board had refused to register him on the ground that although his residence in the district was sufficient, he was not a citizen of the United States. *Held:* under the XIVth Amendment to the Constitution defining citizens as "all persons born or naturalized in the United States and subject to the jurisdiction thereof," this refusal was proper since the relator, who was not a native-born citizen of the United States, had not been naturalized, either by the usual process, or by the Treaty of Peace with Spain, Congress having so far failed to execute the clause, Article IX, which provides that that body shall "determine" the "civil rights and political status of the native inhabitants of the territories hereby ceded."

The above decision, it seems, has been considered by some to hold that Porto Ricans, as they are not citizens, are altogether outside the Constitution and laws of the United States. Such was not the understanding of the Court. On the contrary, the learned judge said (p. 589): "The right claimed by the relator depends upon express proof that the rights of full citizenship were conferred and it cannot be upheld solely upon the broad claim that the Constitution follows the flag, or the claim that in the United States there can be no subjects. If it were a case in which the relator was sought to be deprived of life, liberty or property without due process of law, a different question would be presented."

In the use of the phrase "full citizenship," there appears to be an implication that the word citizenship may be used in different senses, and that a person may be a citizen for some purposes without being a citizen for all purposes. It must be confessed that there is some foundation for such an implication, owing to the fact that the terms "citizen" and "citizenship" are often used vaguely and indefinitely to denote not merely a legal relation under municipal law, but also the more general idea of nationality. The Treaty of Peace with Spain in the artlcle from which we have quoted, recognizes this distinction, when it couples with the provision that "the civil rights and political status of the native inhabitants shall be determined by Congress," the stipulation that natives of Spain,

residing in the ceded territory, shall, unless they declare their intention to preserve their "allegiance" to Spain, be held to have adopted the "nationality" of the territory in which they reside.

These clauses make a clear distinction between citizenship under municipal law and citizenship in the sense of nationality. Nor is the distinction novel, though it may have been somewhat neglected or overlooked by writers. It was clearly indicated by Mr. Marcy, as Secretary of State, in the Koszta Case (*Wharton's Int. Law, Digest II*, § *198*). In that case there was no pretense that Koszta was a citizen of the United States, but it was maintained that as he had been decitizenized and banished by Austria there might be claimed for him, in virtue of his domicile in the United States, an American nationality. In the whole discussion Mr. Marcy carefully speaks of the "national character" and not of the "citizenship" of Koszta as the foundation of his position.

As to what bearing, if any, the possession of American nationality as distinct from American citizenship, might have upon the assertion of rights to life, liberty and property under the Constitution of the United States we do not in this place undertake to say. We wish merely to point out the fact that the learned Judge who decided the case under discussion reserved that question.

TRUSTS—NEW YORK RULE AGAINST PERPETUITIES.—In 1893 the New York Legislature amended the State Law of Uses and Trusts by a section allowing a beneficiary of a life interest who was also the absolute legal owner in remainder, to execute to his trustee a release which would thereby revest the entire legal estate in the beneficiary. The above provisions of the Law of 1893 were embodied in Section 83 of the Real Property Law (Chap. 547, Laws of 1896), and in Section 3 of the Personal Property Law (Chap. 417, Laws of 1897). These sections make any trust, whether of real or personal property, created under the laws of New York, alienable, because any beneficiary or group of beneficiaries may buy in the remainder, execute the release above mentioned, and become owner of the fee or absolute title in possession. The effect of Section 83 upon the rule against perpetuities has been explained in *Mills* v. *Mills* (50 App. Div., 221), decided in April, 1900. Real estate was devised in trust, the income to be divided among four beneficiaries and their survivors, and after the death of the last survivor the legal fee was to vest in a corporation. The Court held that this did not violate the rule against perpetuities because the property could be alienated at any time by the united action of the beneficiaries and the remainderman, as described above. In *Beardsley* v. *Hotchkiss* (96 N. Y., 214) 1884, there was a devise to a son for life, with contingent remainders to other children. It was argued that alienation was suspended because the children could not alienate to strangers, but the Court held that as the children could release to the son, and he could then convey the fee, there was no suspension whatsoever of the power of alienation.

What, then, is the effect of the principal case? There are only